

R Appexure 'A' S

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.543/93.

THIS THE 2ND DAY OF DECEMBER, 1993

SHRI JUSTICE P.K.SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN .. MEMBER (A)

S.R. Adimurthy,
S/o. Sri Ramappa,
32 years,
No.38/1, II Cross,
Nagappa Block, Sreerampuram,
Bangalore-21. .. Applicant

(By Advocate Shri S. Ranganatha Jois)

Vs.

- R
1. The Chief Mechanical Engineer,
Wheel and Axle Plant,
Yelahanka, Bangalore-64.
 2. The Chief Personnel Officer (Personnel Br),
Wheel and Axle Plant,
Yelahanka, Bangalore-64.
 3. The General Manager,
Wheel & Axle Plant,
(Personnel Branch),
Yelahanka, Bangalore-64. .. Respondents

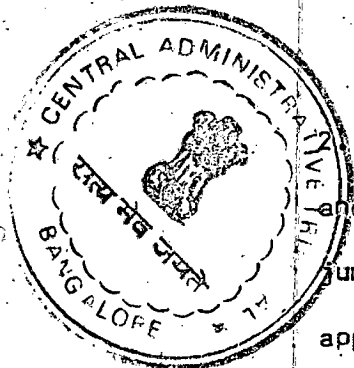
(By Advocate Shri A.N. Venugopal)
Central Govt. Standing Counsel.

ORDER

Shri Justice P.K. Shyamsunder, Vice Chairman.

Heard both sides. Admit.

This application by a quondam employee of the Wheel and Axle Plant at Bangalore is clearly a case of some ^{one} who jumped the trigger before actually a shot was fired, possibly apprehending action being taken to terminate his services for having joined a strike that took place in the Wheel & Axle Plant



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in the year 1991. The applicant appears to have taken what according to him the precautionary measure of tendering his resignation to the post held by him in the Wheel & Axle Plant who is the lone respondent herein represented by three different officers at the administrative level. A copy of that resignation letter is produced by the respondents who opposed the application by filing a objection statement. It is at Annexure-R1, dated 10th October, 1991 in which his request is to accept his resignation with effect from 11.3.1991. The respondent department accepted his resignation with effect from 22.03.1991 and communicated the same vide order dated 27.11.1991 (Annexure-R2). The letter reads:

"WHEEL & AXLE PLANT
(Ministry of Railways)

General Manager's Office,
(Personnel Branch)
Yelahanka, Bangalore-64.

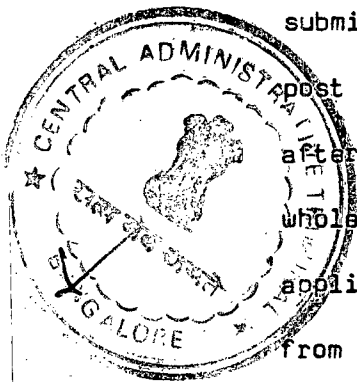
M E M O R A N D U M

The resignation tendered by Shri S.R.Adimurthy (Staff No.73699) Wheel Unit Operator, Moulding Room, Mechanical Branch, in the scale Rs.1200-1800(RPS) has been accepted by the Competent Authority and he will accordingly cease to be in Railway Service with effect from 22.03.1991 subject to remittance of one month's pay towards notice period, to the Administration.

Sd/-
for CHIEF PERSONNEL OFFICER

No.WAP/PF/SRA/1086 Dated: 27-11-1991."

From the two letters supra, it becomes clear the applicant had submitted an unqualified and unconditional resignation to the post he held in the Wheel & Axle Plant. There was an equally after shock response by the respondent department who accepted wholeheartedly the applicant's resignation with the result the applicant ceased to be an employee of the respondents with effect from 22.3.1991. But, later on, for no reason at all, the department



itself stirred the hornets nest by issuing the endorsement at Annexure-A1 dated 27th July, 1992, wherein it purported to rectify the date of resignation mentioned in Annexure-R2 as 10.10.1991 instead of 22.3.1991. The communication in the endorsement at Annexure-A1 is as follows:

"WHEEL AND AXLE PLANT
(Ministry of Railways)

General Manager's Office,
(Personnel Branch),
Yelahanka, Bangalore-64

C O R R I G E N D U M

Further to this office Memo.No.WAP/PF/SRA/1086, dated 27.11.1991 the date of acceptance of resignation tendered by Shri S.R.Adimurthy (Staff No.73699) Wheel Unit Operator, Moulding Room, Mechanical Branch, may please be read as 10.10.1991 instead of 22.3.1991 as mentioned therein.

This has approval of Competent Authority.

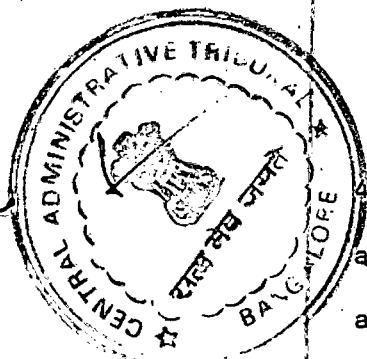
Sd/-
for CHIEF PERSONNEL OFFICER.

No.WAP/PF/SRA/1086 dated 27.7.1992."

3. On receipt of the said endorsement at Annexure-A1, the applicant wrote back as per Annexure-A2, dated 31.7.1992 in which he remonstrated against change in the effective date of his resignation from 22.3.1991 to 10.10.1991 and in the penultimate portion of the letter, he states:

..."In view of the above I request that my case may please be considered sympathetically and accept my resignation from the date of 22.3.1991 without imposing the penalty due to strike since I did not take part in the strike. Otherwise I request that I may please be considered for re-employment in WAP since the lapse of 8 months is not on my part."

The Wheel & Axle Plant once again rebounded to the applicant's resignation at Annexure-A2 by issuing the endorsement at Annexure-A3 dated 28.10.1992 wherein it said that his resignation



8 representation has been considered by the competent authority and was told that his resignation cannot be accepted from a date earlier than the date on which the letter of resignation was submitted. This letter apparently justifies rightly the corrigendum issued at Annexure-A1. Thereafter the applicant took up the matter again with the Chief Personnel Officer, Wheel & Axle Plant by writing another letter dated 15.12.1992 which he ended by stating as follows:

..."Now, that if my resignation could not be accepted with retrospective effect I request that I may please be permitted to join the service. I could not submit by representation within the stipulated time as I received your advice only after a lapse of nine months."

5. When this threat of the prospect of rejoining the plant appeared to be in the mind of the applicant as found from his communication at Annexure-A4, the plant people who apparently did not want the applicant to reimpose himself on them once again, performed another volteface by telling him that the department decided to accept his resignation from 23.2.1991. The endorsement to this effect which is at Annexure-A5 dated 27.1.1993 reads:

"WHEEL & AXLE PLANT

General Manager's Office
(Personnel Branch)
Yelahanka, Bangalore-64.
Dated 27th January 1993.

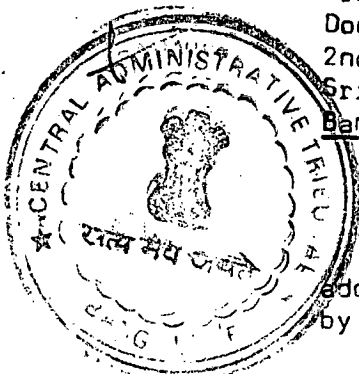
No.WAP/PF/SRA/1086

Sri S.R. Adimurthy,
Door No.38/1 (Jayalakshmi Industries)
2nd Cross, Nagappa Block,
Srirampuram,
Bangalore-560 021.

Sub:Resignation.

Reference to your representation dated 15.12.92 addressed to CPD/WAP, the matter has been carefully considered by the competent Authority. Taking into account the circumstances

...5..



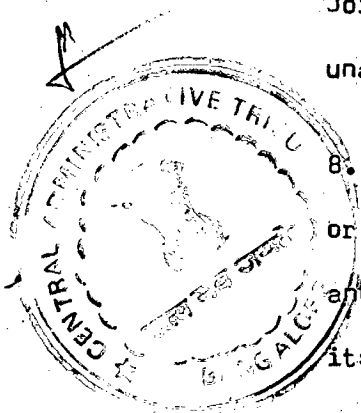
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explained in your representation dated 15.12.91, the competent Authority has in partial supersession of the instructions contained in this office letter of even No. dated 27.7.92 has decided to accept your Resignation w.e.f. 22.3.91."

6. Then followed one more communication from the applicant as per Annexure-A6 asking them to permit him to continue in service in the Wheel & Axle Plant interalia expressing remorse for his action in submitting his resignation, etc., etc. with that the intense correspondence having ended, he is now before us urging that albeit the acceptance of his resignation as per Annexure-R2, the department having later changed its stance by bringing forward the date of resignation and not reckoning it from the date on which it had actually accepted, a step with which he did not concur as could be seen from the representation he has made, in particular, the representation at Annexure-A4 urging that if his resignation could not be accepted with retrospective effect, he should be permitted to join the service, he now says that this clearly is a case of a resignation having been retracted on the basis of the department's action in reversing the date of resignation. He says the position is as if there was no resignation at all and asks us he should be restored into service with all attendant benefits.

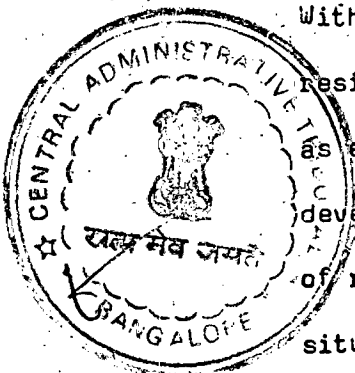
7. We have considered with some earnestness all the submissions put forward in support of the stand by Shri Ranganatha Jois, counsel appearing for the applicant, but find ourselves unable to accede to any of them.

8. The question herein is not whether the respondents had or did not have the authority to accept a resignation from an anterior period, but, the question is whether the resignation itself had been accepted, be it on the terms of the applicant or on the terms of the department.



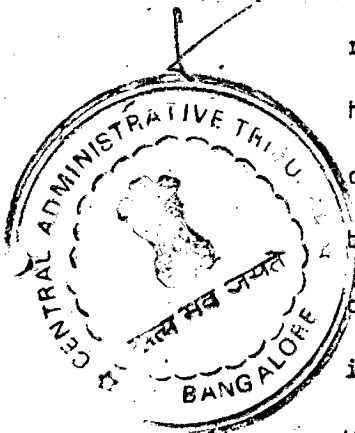
9. The applicant purported to resign with effect from 11.3.1991 and that resignation has been accepted with effect from 22.3.1991 as could be seen from Annexure-R2 which has the same effect as Annexure-A7. Shri A.N. Venugopal for the respondents tells us that after resigning the post and following its acceptance the applicant had vacated the official quarters and had also paid back one month's salary in lieu of notice period as seen from the communication of acceptance as per Annexure-R2 and therefore it is urged that he cannot now say his resignation had not been effective at all and merely because the department thought it was appropriate to revise the date of resignation from 22.3.1991 to 10.10.1991. Even so, the issue of resignation was not alive and could not have enabled the applicant to retrace his steps and ask for reinstatement in service. We think the foregoing position as espoused by Shri A.N. Venugopal appears to be quite tenable.

10. The offer of resignation becomes effective both in law and fact the moment it is accepted by the authority who is competent to accept such resignation. It is not denied the authority competent to accept the resignation had in fact accepted the applicant's resignation as per Annexure-R2 with effect from 22.3.91. With the result from that day, i.e., the day of acceptance of resignation had in fact resulted in the cessation of relationship as employee and employer or master and the servant. The further development occurring with the department trying to shift the date of resignation to 10.10.91 from 22.3.91, does not change the situation at all. It may be seen the corrigendum issued at Annexure-A1 treating the date of resignation as 10.10.91 instead



by then nearly 8 months had elapsed and during all those 8 months, the man had accepted his status as that of a quondam employee of the respondents and his evidence in having vacated his quarters and paid back one month's salary in lieu of notice period on the basis further strengthens the department's case that he had also reconciled his status as an ex-employee.

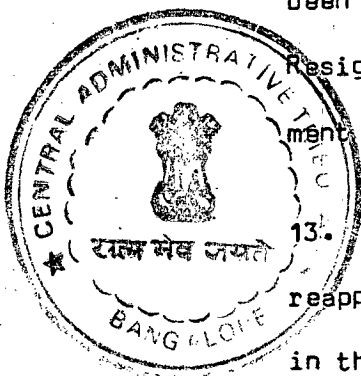
11. What, therefore, follows is that merely because the administration did a turn about and thought the act of acceptance of resignation required a little bit of *laundery* and felt that it was more appropriate to treat the applicant as having resigned from 10.10.91 and not from 22.3.1991 the position of the applicant does not change at all, be it 10.10.91 or 22.3.91, he will remain an employee who had resigned with effect from 22.3.1991 and was therefore not in employment at all. The corrigendum at Annexure-A1, it does not alter the said position at all. What is more in his representation against Annexure-A1 and the explanation at Annexure-A4, he went on to state that if his resignation could not be accepted with retrospective effect, he may be permitted to join service. In other words, he had categorically stated that if his resignation was not to be accepted with retrospective effect he would consider himself being eligible for reinstatement all of which makes it once again apparent that he was insisting on acceptance of a resignation from an anterior date. The department gave no such choice to the applicant because they promptly issued the endorsement as at Annexure-A5 dated 27.1.1993 to which we have drawn attention in which it is mentioned that they had decided to accept his resignation with effect from 22.3.1991 and were now going back on that.



12. Thereafter, the applicant wrote one more letter at Annexure-A6, dated 11.2.1993 in which he simply threw himself at the mercy of the department pointing out that he was somewhat over hasty in tendering resignation which action he was deeply repenting and wanted a reappointment and asked that his request for reappointment be considered sympathetically. The respondents apparently were not disposed to accept his appeal for clemency and were not probably inclined to take him back into service with the result there was no response to the letter at Annexure-A6 and that is where the matter stays. Considering the matter fully, it becomes clear that notwithstanding a bit of hesitancy on the part of the department, the acceptance of the applicant's resignation under Annexure-A1 with effect from 22.3.1991 had become final and the situation did not change with the issuance of the corrigendum at Annexure-A1, dated 27.7.1992 shifting the date of resignation to 10.10.91 from 22.3.91. At any rate, the fauxpas if any committed by the department in issuing the corrigendum at Annexure-A1 was later rectified by issuing the fuller communication under Annexure-A7 making it clear that acceptance of his resignation with effect from 22.3.91 was a thing of the past and had to remain and it became final. The position, therefore, was and clearly is the resignation having been accepted with effect from 22.3.1991 had become final.

Resignation having been accepted, applicant cannot seek reinstatement but can seek reappointment subject to being eligible.

13. But, Shri Jois asks us to direct the department to reappoint the applicant treating him as a fresher as was done in the case of other employees who had participated in the strike during 1991. It is not open to us to give any such direction to



the respondents, but, it will always be open to the applicant to make an application seeking fresh appointment and in case he does so, we are sure the department will consider the same and take appropriate action thereon. We are told the applicant had served for nearly 7 years before taking the suicidal jump of resignation. This aspect, the respondents will bear in mind and consider his case for reappointment in case he seeks the same. No costs.

Solr

(V. RAMAKRISHNAN)
MEMBER (A)

Solr

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN



TRUE COPY

S. Shamber

10/1/94
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 16 JAN 1995

APPLICATION NO: 1090 of 1994.

APPLICANTS:- Sri.S.R.Adimurthy, Bangalore-21.
V/S.

RESPONDENTS:- The Chief Mechanical Engineer,
Wheel & Axle Plant, Bangalore-64 and Others.,


To


1. Sri.S.Ranganatha Jois, Advocate,
No.36, 'Vagdevi' Shankara Park,
Shankarapuram, Bangalore-4.
2. Sri.A.N.Venugopal Gowda,
Advocate, No.8/2, Upstairs,
R.V.Road, Bangalore-4.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on Fifth January, 1995.

Issued on
16/01/95



% for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.1090/1994

THURSDAY, THIS THE 5TH DAY OF JANUARY, 1995

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

S.R. Adimurthy, 33 years,
S/o Sri Ramappa,
No.38/1, II Cross, Nagappa Block,
Sreeramapuram, Bangalore-21. ... Applicant

(By Advocate Shri S. Ranganatha Jois)

Vs.

1. The Chief Mechanical Engineer,
Wheel and Axle Plant, Yelahanka,
Bangalore-64.
2. The Chief Personnel Officer (Per.Br),
Wheel And Axle Plant, Yelahanka,
Bangalore-64.
3. The General Manager, (Personnel Branch),
Wheel & Axle Plant, Bangalore-64. ... Respondents

(By Advocate Shri A.N. Venugopal Gowda,
Standing Counsel for the Railways)

ORDER

Heard both sides. The grievance of the applicant is that the Railways have declined to appoint him once again to the place which he held earlier and had lost consequent on his resignation. This is a second round of litigation and in the first round, the Court declined to interfere while disposing off O.A. No.543/93 on the 2nd December, 1993, wherein the action of the department to accept the resignation by the Railway Administration was upheld and however the Court did make an observation that the applicant may consider making a representation seeking reappointment and if such an application is made, the authorities may consider the same and that whatever decision they take, it should take into consideration the fact that he had put in 7 years of service before resigning the post.



2. I am now told the applicant did apply to the administration for fresh employment or reemployment. But, the Railway administration has since thwarted that plea and declined to employ him once again. There is an endorsement to the effect at Annexure-A2 and Shri Jois, counsel for the applicant comments that the endorsement is neither here nor there and is so cryptic that one really suspects whether the authorities had applied their mind to re-employment issue focussed as a sequel to the earlier order made by the Tribunal supra. But, Shri A.N.Venugopal Gowda, for the Railway administration joins in and invites my attention to the fact that albeit the endorsement being somewhat wanting in details, that did not mean the case of the applicant had not been fairly considered before a decision was recorded. He tells me that the applicant was found to be one of the ring leaders who were prone to induce people to rise against the administration and in that situation, the administration did not consider it proper to re-employ the applicant. Shri Jois submits that some others who were similarly situated were actually employed and therefore there was no reason for the department in not meting out similar treatment to the applicant.

3. While, I do not wish to go into the circumstances in which some others whose services had ceased being again rehabilitated, the fact that the applicant herein had resigned and his resignation had been validly accepted by the Administration being clear from the proceedings arising from the order accepting his resignation. This Tribunal upheld his resignation terming to be voluntary and valid in law. However, in the instant situation, the administration did consider the motion for re-employment and obviously such a motion having made since has declined the same as per Annexure-A2. I need hardly mention that employment and of-course re-employment is a matter vesting with the discretion of the employing agency,

viz., the employer. Therefore, if an employer is not inclined either to employ or re-employ the erstwhile employee and adumbrates some reasons to support a decision reached in that behalf, it is hardly appropriate for this Tribunal to intervene and after finding fault with the employer in the matter of exercise of discretion and as a consequence force the employer to offer employment to the person who seeks the same. This is not a case in which any malafide is attributed to the administration while exercising discretion in the re-employment of an erstwhile employee. In that situation, it is not open for the Tribunal to intervene and ask the employer to offer employment to the applicant.

4. For the reasons mentioned above, this application fails and is dismissed.

Sd-
(P.K.SHYAMSUNDAR)
VICE CHAIRMAN



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[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore